

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

NORTHWEST PALLET SUPPLY CO.,	)	
	)	
Plaintiff,	)	Case No. 3:15-cv-50182
	)	
v.	)	Honorable Judge Andrea R. Wood
	)	
PECO PALLET, INC.,	)	Magistrate Judge Michael T. Mason
	)	
Defendant.	)	

**PECO PALLET SUPPLY INC.'S ANSWER TO NORTHWEST PALLET SUPPLY CO.'S  
AMENDED COMPLAINT**

Defendant, PECO Pallet, Inc. ("PECO"), by and through its undersigned attorneys, hereby answers Northwest Pallet Supply Co.'s ("Northwest") Amended Complaint (Dkt. 8) (the "Complaint") and states as follows:

**NATURE OF THE CASE**

1. PECO is one of the largest manufacturers and suppliers of wood pallets in North America. Northwest Pallet is a family-run pallet supply management company specializing in recycling, remanufacturing and repairing wood pallets that are purchased and collected from its network of large national retailers such as Home Depot, Walgreens and Target. For years, and through its Total Pallet Solutions business that it provides to its national retailer customers, Northwest Pallet has collected, sorted and returned pallets manufactured by PECO which were abandoned by PECO's Consumer Packaged Goods ("CPG") customers at national retailers like Home Depot, Walgreens and Target. Northwest Pallet has always returned the PECO manufactured pallets to the nearest PECO distribution center and PECO has been providing compensation to Northwest Pallet over the years to perform these services. Recently, however, PECO informed Northwest Pallet that it was now unilaterally discontinuing its commitment to pay \$2.25 per returned pallet under its publicized Asset Recovery Program ("ARP") and that instead it expected Northwest Pallet to continue to collect, sort and return PECO's pallets now for only \$0.20 -- less than one-tenth of what PECO had agreed to pay under the ARP. However, the true intent behind PECO's abrupt "about face" is based on PECO's attempts to pass on its business costs to Northwest Pallet (and other pallet recyclers) and to interfere with Northwest Pallet's contracts and relationships with its national retailer customers in order and take over the "Total Pallet Solution" business that Northwest Pallet provides to those retailers while utilizing its prominence as one of the largest pallet manufacturers as leverage to force Northwest Pallet out of the market.

**ANSWER:** PECO admits that it is one of the largest manufacturers and suppliers of wood pallets in North America. PECO further admits that it remitted payments to NWP for its collection and handling of PECO pallets—the amounts of which varied over time and were frequently re-negotiated. PECO lacks knowledge or information sufficient to form a belief as to the truth of Northwest’s assertion that it is “a family-run pallet supply management company specializing in recycling, remanufacturing and repairing wood pallets that are purchased and collected from its network of large national retailers such as Home Depot, Walgreens and Target,” and on that basis denies it. The remainder of this paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph except as expressly admitted.

2. Recently, in furtherance of its efforts to strong-arm Northwest Pallet into its unilaterally “revised” compensation structure for the return of its pallets, PECO has blatantly refused to pick up several loads of its pallets which have collected at Northwest Pallet’s facility. Despite the fact that Northwest Pallet has informed PECO on several occasions that numerous loads of its red wood pallets were available for pick-up with “no strings attached”, PECO has refused to retrieve the pallets and instead has focused its efforts on creating a false paper trail that Northwest Pallet is somehow “holding PECO’s pallets hostage.” PECO has taken its scheme a step further by even refusing to accept purported PECO pallets from other pallet recyclers across the country. Rather than accept PECO pallets from other recyclers throughout the U.S., PECO accuses these other recyclers of wrongfully withholding PECO pallets on behalf of Northwest Pallet. PECO’s refusal to accept delivery of pallets is systematically designed to overwhelm and substantially burden the smaller pallet recyclers around the country, forcing these recyclers into accepting significantly less money for their hard earned efforts and incurred costs in retrieving and returning pallets to PECO. The causes of action alleged herein, including the request of a declaration that PECO has abandoned its pallets by refusing to retrieve them from Northwest Pallet’s facilities, arise from PECO’s unlawful attempt to withhold compensation due Northwest Pallet for services it provides to PECO in returning PECO’s pallets which were abandoned in the marketplace and from PECO’s interference with Northwest Pallet’s relationships with national retailers and other pallet recyclers in an attempt to shift PECO’s significant business expenses related to pallet collecting to recyclers like Northwest Pallet.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO admits that despite Northwest’s claims that PECO’s pallets were available for pickup with “no strings attached,” Northwest has in fact attached

numerous “strings”: including that PECO comply with Northwest’s insurance requirements and that it agree to pick up the pallets on a ‘with prejudice’ basis. PECO otherwise denies the allegations in this paragraph.

### **PARTIES**

3. Northwest Pallet is an Illinois corporation with its corporate headquarters in Belvidere, Illinois.

**ANSWER:** This paragraph contains no allegations related to PECO and thus requires no answer. To the extent an answer is required, PECO, upon information and belief, admits the allegations contained in this paragraph.

4. PECO is a Delaware corporation with its corporate headquarters in Irvington, New York.

**ANSWER:** PECO admits the allegations contained in this paragraph.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 as the matter in question exceeds the sum of \$75,000.00 and involves citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

**ANSWER:** The allegations in this paragraph are legal conclusions to which no response is required.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions that give rise to this case occurred in this District.

**ANSWER:** The allegations in this paragraph are legal conclusions to which no response is required.

### **FACTS COMMON TO ALL COUNTS**

#### **A. PECO’s Pallet Business and Asset Recovery Program**

7. As alleged above, PECO is one of the largest manufacturers and suppliers of wood block pallets in North America. Specifically, PECO manufactures “red wood block pallets,” which, as the name suggests, are painted bold red and marked with PECO’s logo. PECO claims that its red wood block pallets are much stronger and more durable than conventional

stringer pallets and that PECO's standard Grocery Manufacturers Association (48" x 40") pallets are designed to hold up to 2,800-pound loads.

**ANSWER:** PECO admits the allegations contained in this paragraph.

8. Rather than sell its pallets to its customers, PECO "rents" its pallets to its customers for a fee and, on information and belief, does not require its customers to return the pallets even though they are only "rented" by the customer. Instead, on information and belief, PECO represents to its customers that once the pallets are released into the marketplace and delivered to national retailer distribution centers, PECO will take on the obligation of recovering its red wood block pallets for a fee.

**ANSWER:** PECO admits that it rents its pallets to its customers for a fee and that, typically, PECO's customers use PECO's pallets to ship goods to retailers, from whom PECO recovers its pallets. Except as expressly admitted, PECO otherwise denies the allegations contained in this paragraph.

9. In light of PECO's business model of not requiring its customers to return the pallets they rent from PECO, on or about October 2013, PECO announced its ARP to Northwest Pallet. (A copy of PECO's correspondence dated October 2013 announcing its ARP is attached hereto as Exhibit 1.) PECO's ARP, which was publicized and offered to pallet recyclers across the country, including Northwest Pallet, was designed to recover rented pallets that end up at national retailer distribution centers and ultimately with a pallet recycler such as Northwest Pallet. According to the ARP, PECO agreed to pay pallet recyclers \$2.25 per red pallet returned to PECO by the pallet recycler or \$1.25 per red pallet if loaded onto a PECO truck. Specifically, PECO's ARP provides:

If you receive a large number of PECO pallets and want to return them to our service center in your area, PECO will compensate you at the rate of \$2.25 per pallet plus a Fuel Service Charge based on the US Energy Information Weekly Retail On-Highway Diesel Prices. (Exhibit 1.)

**ANSWER:** PECO admits that it has an Asset Recovery Program for the recovery of *stray* pallets and that the October 2013 correspondence attached to Northwest's complaint describes this program as it existed in October 2013. Except as expressly admitted, PECO otherwise denies the allegations contained in this paragraph.

**B. Northwest Pallet's Pallet Recycling and Total Pallet Solutions Business**

10. Northwest Pallet is a family-run pallet supply management company specializing in recycling, remanufacturing and repairing wood pallets that are purchased and collected from

its network of large national retailer customers such as Home Depot, Walgreens and Target. Northwest Pallet frequently collects pallets from its retailer customer distribution centers, sorts them according to type of pallet (*i.e.*, standard white wood pallets, PECO's red wood pallets and blue pallets manufactured by CHEP USA, another pallet manufacturer). If necessary, Northwest Pallet makes repairs to some of the pallets it collects or, if the pallet is damaged beyond repair, Northwest Pallet breaks down the pallet into reusable lumber.

**ANSWER:** This paragraph contains no allegations related to PECO and thus requires no answer. To the extent an answer is required, PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies them.

11. Northwest Pallet provides its Total Pallet Solutions to its national retail customers to eliminate the process of sorting the pallets that ultimately end up at a retailer's distribution center. In short, because PECO's business model did not require the rented pallets to be returned by its customers, national retailers spend significant time, money and resources in sorting pallets (separating the white, red and blue pallets) to make sure the red pallets were returned to PECO.

**ANSWER:** To the extent this paragraph contains allegations unrelated to PECO, no answer is required. To the extent a response is required, PECO denies the allegations contained in this paragraph.

12. While historically Northwest Pallet was servicing these national retailers for purposes of recycling the standard white wood pallets, because of the significant time and expense incurred by the national retailers without any compensation for those efforts, several national retailers approached Northwest Pallet about providing a Total Pallet Solution so that Northwest Pallet could service all pallets collected at the distribution centers -- white, red and blue.

**ANSWER:** This paragraph contains no allegations related to PECO and thus requires no answer. To the extent an answer is required, PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies them.

13. Relying on the ARP offered by PECO and PECO's unequivocal promise to reimburse pallet recyclers \$2.25 per pallet for each red wood pallet returned to PECO, Northwest Pallet entered into agreements with several of its national retailer customers to handle all pallets at each facility for a fixed cost which was determined and agreed upon based on the ARP rate PECO had promised to pay recyclers for returning its red pallets.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

14. Northwest Pallet has expended significant resources, time and expense in providing Total Pallet Solutions to its customers, which includes the collection, sorting and return of red wood pallets to PECO under the ARP.

**ANSWER:** PECO lacks knowledge or information sufficient to form a belief as to the truth of any allegations contained in this paragraph, and on that basis denies them.

15. Since implementing the Total Pallet Solutions program, Northwest Pallet has diligently and timely returned red wood pallets to PECO in exchange for the compensation PECO agreed to pay. And, until recently, PECO generally compensated Northwest Pallet the amounts it had agreed to pursuant to the ARP in a relatively timely manner.

**ANSWER:** PECO admits that Northwest returned some, but not all, of PECO pallets to PECO and that PECO remitted compensation, in varying amounts, to Northwest. PECO denies the remaining allegations contained in this paragraph.

**C. PECO Abruptly Reneges On Its Payment Obligations Under the ARP and Refuses to Retrieve its Pallets from Northwest Pallet Facilities**

16. Without any notification or warning whatsoever, Northwest Pallet received a letter dated May 12, 2015 from PECO's outside litigation counsel, informing Northwest Pallet that it was no longer going to be compensating Northwest Pallet for its services in returning pallets to PECO under the terms previously promised by PECO and that, somehow now, PECO legally owed nothing to Northwest Pallet for the services of collecting, sorting and returning the red wood pallets to PECO. However, PECO asserted it would be willing to pay Northwest Pallet \$0.20 per pallet returned to PECO going forward -- less than one-tenth what it had promised to pay and had been paying for years agreed to pay.

**ANSWER:** PECO admits that it engaged in preliminary settlement negotiations with Northwest, which were designated as "For Settlement Purposes Only," and which Northwest has improperly quoted in its complaint. PECO further admits that it offered to pay Northwest a "reasonable fee" of \$0.20 per pallet, which is less than the \$1.25 that PECO offered for the collection of stray pallets under its ARP letter. PECO otherwise denies the allegations contained in this paragraph.

17. Once Northwest Pallet voiced its objection to PECO's attempts to unilaterally change the payment terms of the ARP, PECO, again through its counsel, informed Northwest Pallet that its offer to only pay \$0.20 per pallet is a "number that will not move" and that Northwest Pallet had to return PECO's pallets under PECO's unilaterally asserted "revised" compensation arrangement in order to avoid "costly and time-consuming litigation."

**ANSWER:** PECO admits that it engaged in preliminary settlement negotiations with Northwest, which were designated as "For Settlement Purposes Only," and which Northwest has improperly quoted in its complaint. PECO admits that it stated in one such communication that its offer of \$0.20 was "a number that will not move" and that in another prior communication that Northwest's refusal to return PECO's property could result in "costly and time-consuming litigation." PECO further admits that it demanded that Northwest return PECO pallets, which PECO retains ownership of, and which Northwest was wrongfully detaining. PECO otherwise denies the allegations contained in this paragraph.

18. Further, despite PECO's unsupported, self-serving accusations that Northwest Pallet has been holding PECO's pallets "hostage," Northwest Pallet has continued to collect, sort and return (or attempted to return) PECO's pallets. However, now, in addition to refusing to pay the compensation due Northwest Pallet for the collection, sorting and return of PECO pallets, PECO has recently refused on several occasions to retrieve its pallets from Northwest Pallet's facilities even though Northwest Pallet has repeatedly informed PECO that several loads of its pallets were available for pick-up without any strings attached. Instead of simply picking up the pallets, and in furtherance of PECO's transparent effort to inaccurately portray Northwest Pallet as refusing to return PECO's pallets, PECO continues to refuse to pick up the pallets and continues its false paper trail campaign that Northwest Pallet is "holding PECO's pallets hostage."

**ANSWER:** PECO admits that Northwest continues to acquire PECO pallets and, in some instances, has refused to make those pallets reasonably accessible to PECO to pick up. PECO continues to attempt to retrieve its pallets that Northwest has been wrongfully detaining. PECO also admits that despite Northwest's claims that PECO's pallets were available for pickup with "no strings attached," Northwest has in fact attached numerous "strings": including that PECO comply with Northwest's insurance requirements and that it agree to pick up the pallets on a 'with prejudice' basis. PECO denies the remaining allegations contained in this paragraph.



19. By way of recent examples, on July 15, 2015, Northwest Pallet's customer service representative informed PECO that four loads of PECO pallets were available for pick up. On July 17, 2015, two PECO drivers arrived at Northwest Pallet's Belvidere, Illinois facility to apparently pick up PECO pallets but refused to do so when they were informed that, in light of PECO's position outlined in its counsel's May 12, 2015 letter refusing to further compensate Northwest Pallet for returning PECO's pallets under the previous terms, PECO would have to load its own pallets. The two drivers declined and left. Then, on July 27, 2015, Northwest Pallet again contacted PECO about pallets available for pick up at Northwest Pallet's Belvidere facility and PECO did not respond. Northwest Pallet followed up again on July 29, 2015 about the several loads of PECO pallets which needed to be picked up and which were collecting in numbers that were impacting the other operations of Northwest Pallet's business. After receiving no response from PECO, on August 4, 2015, Northwest Pallet customer service department sent another email again with respect to the growing number of PECO pallets collecting at Northwest Pallet's facilities and, again, by the date of the filing this Complaint, received no response from PECO.

**ANSWER:** PECO admits that it was informed that there were four loads of PECO pallets to be picked up on July 15, 2015 and that when drivers arrived to pick up the pallets, Northwest refused to load the pallets, as had been the parties' practice and custom, and refused to allow the drivers to use the forklift that was present at the location, with such requirements not being communicated to PECO in advance of dispatching the drivers. PECO admits that on July 27, 2015 and July 29, 2015 it was informed that PECO pallets were available to pick up from Belvidere, but only if PECO would load the pallets without using any equipment at the location and bring a cashier's check for the invoiced amount, which NWP unilaterally set at rates far in excess of market compensation. PECO otherwise denies the allegations contained in this paragraph.

20. Continuing its tireless efforts to return the pallets it collected to PECO, Northwest Pallet, on multiple occasions, contacted PECO and informed PECO that the pallets were available to be picked up from Northwest Pallet's Belvidere, Illinois facility with "no strings attached." These offers were met with either silence or sham conditions used to mask PECO's refusal to accept Northwest Pallet's clear offer to have the pallets picked up.

**ANSWER:** PECO admits that, as a litigation tactic, Northwest has attempted to unilaterally alter the status quo of the parties' relationship by refusing to load PECO's pallets (despite repeatedly agreeing to do so) while also refusing to negotiate with PECO in good faith to seek a



resolution of the issue. PECO also admits that despite Northwest's claims that PECO's pallets were available for pickup with "no strings attached," Northwest has in fact attached numerous "strings": including that PECO comply with Northwest's insurance requirements and that it agree to pick up the pallets on a 'with prejudice' basis. PECO otherwise denies the allegations contained in this paragraph.

21. PECO has continued its scheme and strong-arm tactics to stifle the pallet recycling industry by steadfastly refusing the return of pallets, which PECO voluntarily allows its customers to release into the market and not return to PECO, from numerous recyclers around the country and asserting a feigned claim that these recyclers are wrongfully withholding PECO pallets on behalf of Northwest Pallet. By refusing to accept delivery of these pallets, PECO is attempting to force the pallet recyclers to accept payments that are significantly less than the cost and expense incurred in retrieving those pallets on PECO's behalf.

**ANSWER:** PECO denies the allegations contained in this paragraph.

22. On August 12, 2015, PECO's coercive measures reached a new low when a PECO employee, accompanied by a purported sheriff, appeared at a pallet recycler demanding information about where the pallet recycler obtained its pallets, accusing the pallet recycler of maintaining pallets on behalf of Northwest Pallet and implying that the pallet recycler was involved in illegal activity.

**ANSWER:** PECO denies the allegations contained in this paragraph.

23. Over the several weeks immediately preceding the filing of this lawsuit, PECO engaged in a further scheme to destroy Northwest Pallet's business by persistently harassing Northwest Pallet's national retailer customers and recycling partners with threats of dragging them into litigation if they continued to do business with Northwest Pallet. PECO representatives also have falsely informed several of Northwest Pallet's national retailer customers and recycler partners that Northwest Pallet was engaging in some illegal activity. PECO representatives have articulated these threats and made these false accusations of Northwest Pallet through dozens upon dozens of phone calls, emails and even by physically visiting several of Northwest Pallet's national retailer customers and recycling partners.

**ANSWER:** PECO denies the allegations contained in this paragraph.

24. Further, PECO has refused to pay outstanding invoices from Northwest Pallet for services it has provided to PECO in collecting sorting and returning its red wood pallets in the total amount of \$94,572.95. Of that amount, \$49,951.85 is the amount in fees for services incurred prior to the May 12, 2015 letter from PECO's counsel attempting to change the terms of PECO's payment obligations.

**ANSWER:** PECO admits that it has attempted, without success, to reach an agreement with Northwest regarding payments for Northwest's pre-May 12, 2015 fees for the services it purports to provide. PECO also admits that it has refused to pay the extortionate fees charged by Northwest for the services it purports to provide, but has instead offered to pay the reasonable value of Northwest's costs for its collection, sorting and return of PECO's pallets.

25. On information and belief, and based on conversations with its national retailer customers, PECO's true intent by its sudden decision to cease compensating Northwest Pallet and other pallet recyclers under its ARP is to obtain the return of pallets at costs significantly below customary and reasonable amounts and to drive pallet recyclers out of business. PECO knows that by reneging on its agreement to pay recyclers \$2.25 per pallet as PECO agreed to do under its ARP and instead only offering \$0.20 per pallet Northwest Pallet can no longer afford to continue its Total Pallet Solutions business with its national retailer customers. PECO's refusal to pick up or even accept pallets from recyclers, which is designed to strain recyclers' resources until they accept PECO's cut-rate and below-market compensation offers, clearly demonstrates PECO's attempt to usurp Northwest Pallet's customer relationships in order to take over the Total Pallet Solutions business, including servicing not only PECO red pallets but the white wood and blue pallets as well, and force Northwest Pallet, as well as other recyclers, out of the market in the process.

**ANSWER:** PECO denies the allegations contained in this paragraph.

### **COUNT I** **Declaratory Judgment**

26. The allegations in Paragraphs 1 through 24 are incorporated by reference as though fully set forth herein.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

27. During the ordinary course of Northwest Pallet's business as a pallet recycler, Northwest Pallet purchases pallets from manufacturers and distributors. Northwest Pallet purchases these pallets as part of an allotment which Northwest Pallet does not inspect or see before purchasing.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

28. Sometimes, the allotment which Northwest Pallet purchases includes pallets from PECO that PECO leased or rented to PECO customers. PECO as part of its business does not

require its customers to return the PECO pallets to PECO. Rather, PECO abandons the PECO pallets and allows them to reenter the marketplace.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

29. After purchasing pallets, Northwest Pallet recycles the pallets. Northwest Pallet picks up pallets from the selling manufacturers and distributors, sorts them and readies them to be inserted back into the marketplace. Northwest Pallet stores the pallets until other manufacturers and distributors are ready to purchase and use the pallets. Once the pallets are bought, Northwest Pallet delivers them to the purchaser or sets up a pick up location.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

30. PECO, having known of Northwest Pallet's recycling, contacted Northwest Pallet and sought Northwest Pallet's services in tracking, collecting and delivering PECO pallets that PECO did not seek the return of from its customers. This "recapture" of pallets was documented in PECO's ARP.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

31. Because PECO did not require its customers return PECO pallets to PECO and never enforced contractual provisions, if any, establishing the return of PECO pallets by its customers, PECO has abandoned tens of thousands of pallets and placed them into the stream of commerce.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

32. PECO agreed to compensate Northwest Pallet \$2.25 plus a fuel charge for every PECO pallet Northwest Pallet delivered to a PECO service center. PECO also approved a payment to Northwest Pallet of \$1.25 per pallet for each PECO pallet Northwest Pallet returned to PECO which PECO itself picked up from Northwest Pallet.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

33. Northwest Pallet has a legal tangible interest in the pallets it purchases from third parties and in the pallet recovery services it provides to PECO.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

34. PECO contends that it owns certain pallets in Northwest Pallet's possession that Northwest Pallet purchased in good faith in the marketplace and is not obligated to pay Northwest Pallet for its recovery services and costs associated with collecting, transporting, sorting and returning the red wood pallets to PECO in connection therewith.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

35. There is an actual and justifiable controversy between Northwest Pallet and PECO regarding ownership of certain pallets and compensation owed to Northwest Pallet for its pallet recycling services provided and for that reason declaratory relief is both necessary and proper.

**ANSWER:** This paragraph relates only to Northwest's declaratory judgment claim, which has been dismissed, and accordingly, no response is required.

WHEREFORE, Plaintiff Northwest Pallet respectfully requests that this Honorable Court:

a. Issue a declaration that PECO, by allowing its customers to abandon PECO pallets and release them back into the marketplace, and by systematically refusing to pick up pallets from Northwest Pallet's facility despite being repeatedly informed that PECO's pallets were available for pick-up, PECO has no ownership interest in those abandoned pallets and that recyclers like Northwest Pallet are bona fide purchasers with full and clear title to the abandoned PECO pallets; or, alternatively,

b. Issue a Declaration that Northwest Pallet is entitled to just and reasonable compensation for its services of collecting, sorting and returning pallets to PECO;

c. Issue a Declaration that Northwest Pallet is entitled to just and reasonable compensation for all pallets which have been returned to PECO for which PECO has refused to tender payment;

d. Issue a Declaration that Northwest Pallet has an enforceable lien on all pallets upon which it performed recycling services and/or stored on its premises; and

e. Award Plaintiff such further relief as this Honorable Court may deem equitable and just.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

**COUNT II**  
**Unjust Enrichment**

36. The allegations in Paragraphs 1 through 24 are incorporated by reference as though fully set forth herein.

**ANSWER:** PECO incorporates its answers to paragraphs 1 through 24.

37. PECO rents pallets to grocery and consumer goods manufacturers across North America. PECO's clients use the pallets in the ordinary course of their business; however, PECO's customers do not return the pallets to PECO and PECO does not require or seek the return of these pallets from its customers. On information and belief, PECO imposes a surcharge on each of its customers for each pallet leased in exchange for releasing the customer from any obligation to return the pallet to PECO.

**ANSWER:** PECO admits that it rents pallets to grocery and consumer goods manufacturers across North America. PECO otherwise denies the allegations contained in this paragraph.

38. PECO's customers ship their products on PECO's pallets, which end up at distribution centers throughout the United States, including the distribution centers of Northwest Pallet's customers such as Home Depot, which, in turn, sell all of the pallets which end up at their distribution centers, including the red wood PECO pallets, to Northwest Pallet as part of the "Total Pallet Solution" program Northwest Pallet has with its customers.

**ANSWER:** PECO admits that PECO's customers ship their products on PECO's pallets, which end up at distribution centers throughout the United States including the distribution centers of Home Depot. PECO lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and on that basis denies them.

39. Northwest Pallet buys pallets in bulk from its customers without knowing what type of pallet will be included in the purchase. Some of the pallets purchased by Northwest Pallet are PECO pallets, most are not.

**ANSWER:** PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and on that basis denies them.

40. When purchasing pallets from its customers, Northwest Pallet incurs substantial costs associated with the transportation, loading and unloading, sorting, storage and shipping costs in reselling the pallets, or in the case of PECO, returning the red wood pallets to PECO. Northwest Pallet drives to facilities of the manufacturers and distributors to pick up the pallets. Northwest Pallet unloads and sorts the pallets and gets them into a condition whereby the pallets are ready to be placed back into the marketplace. Northwest Pallet stores the pallets until other

manufacturers and distributors are ready to purchase and use the pallets. After the pallets are purchased and ready to be placed back into the marketplace, Northwest Pallet loads the pallets onto trucks and delivers the pallets to the purchasing manufacturers and distributors or, in the case of PECO, returning the red wood pallets back to PECO.

**ANSWER:** PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and on that basis denies them.

41. Knowing that Northwest Pallet is a respected pallet recycler, PECO contacted Northwest Pallet and sought Northwest Pallet's assistance in tracking, collecting and delivering PECO pallets that PECO did not seek the return of from its customers. This recovery effort by PECO was part of PECO's Asset Recovery Program. Seeing that PECO stopped requiring its customers to return PECO pallets to PECO and PECO stopped enforcing contractual provisions necessitating the return of PECO pallets by its customers, PECO had abandoned tens of thousands of pallets and placed them into the stream of commerce.

**ANSWER:** PECO admits that it sent its ARP letter to pallet recycler across the country, including Northwest. PECO denies the remaining allegations contained in this paragraph.

42. Under PECO's ARP, PECO needed the services of recyclers like Northwest Pallet. For several years, Northwest Pallet has performed its pallet recovery services for PECO.

**ANSWER:** PECO admits that it has had business dealings with Northwest for several years which ultimately necessitated PECO to file a suit against Northwest related to Northwest's supposed "pallet recovery services." PECO otherwise denies the allegations contained in this paragraph.

43. PECO and Northwest Pallet did not enter into a written agreement pertaining to the services Northwest Pallet performed to the benefit of PECO.

**ANSWER:** This paragraph contains legal conclusions to which no response is required.

44. PECO though agreed to compensate Northwest Pallet \$2.25 plus a fuel charge for every PECO pallet Northwest Pallet delivered to a PECO service center. PECO also approved a payment to Northwest Pallet of \$1.25 per pallet for each PECO pallet Northwest Pallet returned to PECO which PECO itself picked up from Northwest Pallet.

**ANSWER:** PECO admits that its ARP letter, which applies only to stray pallets, contemplated payment in these amounts. Otherwise, PECO denies the allegations contained in this paragraph.

45. Northwest Pallet did not perform these pallet recycling services gratuitously. Pursuant to the words, conduct and actions of PECO, Northwest Pallet transported, unloaded, sorted, stored, loaded and shipped the PECO pallets to PECO on the understanding that PECO would adequately compensate Northwest Pallet for these recovery services.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and on that basis denies them.

46. PECO time and again accepted Northwest Pallet's recovery services and paid Northwest Pallet \$2.25 plus a fuel charge for each PECO pallet Northwest Pallet returned to PECO and \$1.25 per pallet for every PECO pallet Northwest Pallet obtained and PECO picked up from Northwest Pallet.

**ANSWER:** PECO admits that it has in the past paid Northwest rates, which have frequently varied, for returning PECO's pallets. PECO otherwise denies the allegations contained in this paragraph.

47. On information and belief, there are substantial costs associated with recovering or recycling pallets and PECO passes on these considerable costs onto pallet recyclers like Northwest Pallet. For example, in litigation similar to this case, a pallet manufacturer has been found to owe \$5.00 per pallet for receiving pallet recycling services from a recycler similar to Northwest Pallet.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent an answer is required, PECO denies the allegations in this paragraph.

48. Accordingly, PECO has been unjustly enriched in the amounts incurred by Northwest Pallet for the collection, sorting, transportation, storing, loading and unloading and the return of each PECO pallet as well as other costs incurred by PECO which are passed on to Northwest Pallet in the pallet recovery process.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

WHEREFORE, Plaintiff Northwest Pallet respectfully requests that this Honorable Court enter judgment in their favor on Count II of this Complaint against Defendant PECO and award damages for an amount in excess of \$75,000.00, reasonable attorneys' fees, plus costs of suit and for such other and further relief as this Honorable Court deems equitable and just.



**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

**COUNT III**  
**Promissory Estoppel**

49. The allegations in Paragraphs 1 through 24 are incorporated by reference as though fully set forth herein.

**ANSWER:** PECO incorporates its answers to paragraphs 1 through 24.

50. PECO made an unambiguous promise under its ARP to adequately compensate Northwest Pallet for each and every red PECO pallet returned to a PECO distribution center.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

51. Northwest Pallet relied on PECO's promise to adequately compensate Northwest Pallet under the ARP to Northwest Pallet's detriment for each and every red PECO pallet Northwest Pallet recovered and returned to PECO as part of PECO's ARP.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

52. Northwest Pallet's reliance on PECO's promise to adequately compensate Northwest Pallet for recovering and returning red PECO pallets was expected and foreseeable by PECO.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

53. Northwest Pallet relied on PECO's promise to adequately compensate Northwest Pallet under the ARP to Northwest Pallet's detriment when, among other things, Northwest Pallet entered into agreements with its third party customers to purchase all of their pallets in providing Total Pallet Solution services to its customers. Incidental thereto, Northwest Pallet recovers and returns any PECO red wood pallets which happen to be part of the trailer load of pallets picked up by Northwest Pallet from its customers' distribution centers and incurs substantial costs in relation thereto.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

WHEREFORE, Plaintiff Northwest Pallet respectfully requests that this Honorable Court enter judgment in their favor on Count III of this Complaint against Defendant PECO and award damages for an amount in excess of \$75,000.00, reasonable attorneys' fees, plus costs of suit and for such other and further relief as this Honorable Court deems equitable and just.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

**COUNT IV**  
**Tortious Interference with Contract**

54. The allegations in Paragraphs 1 through 24 are incorporated by reference as though fully set forth herein.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with contract claim, which has been dismissed, and accordingly, no response is required.

55. Northwest Pallet entered into several valid and enforceable contracts with national retailers to provide Total Pallet Solutions services.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with contract claim, which has been dismissed, and accordingly, no response is required.

56. PECO is and has been aware of many of these contractual relationships between Northwest Pallet and national retailers since, on information and belief, PECO bid on some of the same contracts, whereby Northwest Pallet would provide the national retailers with Total Pallet Solutions services.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with contract claim, which has been dismissed, and accordingly, no response is required.

57. PECO intentionally and unjustifiably has attempted to induce a breach of the contracts between Northwest Pallet and the national retailers through PECO's abrupt decision to cease compensating participants in PECO's ARP like Northwest Pallet and its refusal to pick up of pallets. PECO's decision to stop compensating Northwest Pallet and its refusal to pick up and accept pallets was intentionally done to prevent Northwest Pallet from providing its Total Pallet Solutions services.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with contract claim, which has been dismissed, and accordingly, no response is required.

58. Northwest Pallet has been damaged by PECO's intentional interference, including but not limited to, through incurring added costs while attempting to provide the Total Pallet Solutions services it contracted to perform for national retailers.

**ANSWER:** To the extent the allegations in this paragraph contain legal conclusions or relate to Northwest's dismissed tortious interference with contract claim, no response is required. To the extent a response is required, PECO denies the allegations contained in this paragraph.

WHEREFORE, Plaintiff Northwest Pallet respectfully requests that this Honorable Court enter judgment in their favor on Count IV of this Complaint against Defendant PECO and award damages for an amount in excess of \$75,000.00, reasonable attorneys' fees, plus costs of suit and for such other and further relief as this Honorable Court deems equitable and just.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

**COUNT V**  
**Tortious Interference with Business Expectancy**

59. The allegations in Paragraphs 1 through 24 are incorporated by reference as though fully set forth herein.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

60. Northwest Pallet has a reasonable expectancy to enter into business relationships with national and local retailers to provide pallet recycling services, such as its Total Pallet Solutions services.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

61. Northwest Pallet has a reasonable expectancy to enter into business relationships with other pallet recyclers around the country in order to provide its services to retailers and distribution centers across the country.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

62. PECO knows and has known of Northwest Pallet's expectancy to enter into these business relationships.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

63. PECO has tortiously interfered with those relationships by harassing Northwest Pallet's national retailer customers and partner recyclers with threats of being dragged into litigation if they continue to do business with Northwest Pallet. Representatives from PECO have placed dozens of calls and emails and have even physically visited several of Northwest Pallet's national retailers and recycling partners, articulating these threats of being sued and insinuating that Northwest Pallet has been engaging in some illegal activity.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

64. PECO has further interfered with Northwest Pallet's business expectancies by reversing and reneging on its promise to compensate pallet recyclers like Northwest Pallet a certain amount for the return of red PECO pallets and refusing to pick up and accept PECO pallets. This reversal, coupled with PECO's overt acts of interference directed at the national and local retailers Northwest Pallet conducted business with, prevents Northwest Pallet from realizing its business relationships related to its Total Pallet Solutions business.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

65. PECO's interference with Northwest Pallet's business has actually caused Northwest Pallet damage, including but not limited to lost business and higher costs incurred while recycling and returning pallets.

**ANSWER:** This paragraph relates only to Northwest's tortious interference with business expectancy claim, which has been dismissed, and accordingly, no response is required.

WHEREFORE, Plaintiff Northwest Pallet respectfully requests that this Honorable Court enter judgment in their favor on Count V of this Complaint against Defendant PECO and award damages for an amount in excess of \$75,000.00, reasonable attorneys' fees, plus costs of suit and for such other and further relief as this Honorable Court deems equitable and just.

**ANSWER:** This paragraph contains legal conclusions to which no response is required. To the extent a response is required, PECO denies the allegations in this paragraph.

### **GENERAL DENIAL**

Except as otherwise expressly recognized above, PECO denies each and every allegation contained in Paragraphs 1 through 65, including, without limitation, the footnotes, headings and subheadings contained in Plaintiff's Amended Complaint, and specifically deny any liability to Northwest. Pursuant to Rule 8(d) of the Federal Rules of Civil Procedure, averments in Plaintiff's Amended Complaint to which no responsive pleading is required shall be deemed denied. PECO expressly reserves the right to amend and/or supplement its Answer.

### **AFFIRMATIVE DEFENSES**

PECO asserts the following affirmative defenses to the Complaint, and in support of, repeats, reiterates, and re-alleges its answers to Paragraphs 1-65 of the Complaint, as if fully set forth herein. PECO reserves its right to amend these affirmative defenses and/or to assert counter-claims if discovery reveals any further claims or defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

1. Northwest's claims are barred by the doctrine of unclean hands.

#### **SECOND AFFIRMATIVE DEFENSE**

2. Northwest's claims are barred, in whole or in part, because it has already received compensation for its alleged damages.

#### **THIRD AFFIRMATIVE DEFENSE**

3. Northwest's claims are barred, in whole or in part, by the doctrine of setoff.

#### **FOURTH AFFIRMATIVE DEFENSE**

4. Northwest's Complaint fails to state a claim upon which relief can be granted

against PECO.

**FIFTH AFFIRMATIVE DEFENSE**

5. Northwest's claims are barred, in whole or in part, by the equitable defenses of waiver, and/or estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

6. Northwest's claims are barred because the damages allegedly sustained were not proximately caused by any act or omission of PECO.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Northwest's claims are barred because Northwest knowingly and voluntarily assumed any and all risks associated with the matters alleged in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Northwest's claims are barred because the damages allegedly sustained by Northwest were actually or proximately caused, in whole or in part, by independent, unforeseeable, superseding, and/or intervening cause.

**NINTH AFFIRMATIVE DEFENSE**

9. Northwest's claims are barred because Northwest's alleged damages, if any, were caused solely, partially, or proximately by the actions, omissions, representations, misrepresentations, negligence, or breach of duty of other persons, firms, or corporations that PECO did not and does not control and for whom PECO is not responsible or liable.

**TENTH AFFIRMATIVE DEFENSE**

10. Northwest's claims are barred, in whole or in part, by Northwest's failure to mitigate its damages, if any.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Northwest's recovery, if any, should be reduced pursuant to the comparative and/or contributory negligence, fault, responsibility, or causation of others, including Northwest.

#### **TWELFTH AFFIRMATIVE DEFENSE**

12. Northwest has failed to properly plead the alleged claims with sufficient particularity.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

13. Northwest's claims are barred, in whole or in part, because providing Northwest with the damages it seeks in its suit would result in Northwest's unjust enrichment.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

14. Northwest's claims are barred, in whole or in part, because Northwest is a bailee of PECO's pallets.

#### **COUNTERCLAIMS**

Counterclaim-plaintiff PECO Pallet, Inc. ("PECO"), by its attorneys, Winston & Strawn LLP, as and for its counterclaims against counterclaim-defendant Northwest Pallet Supply Co. ("Northwest") hereby alleges as follows:

#### **PARTIES, JURISDICTION AND VENUE**

1. PECO is incorporated in Delaware; its principal place of business is in New York.
2. Northwest is incorporated in Illinois; its principal place of business is in Illinois.
3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is complete diversity and the amount in controversy exceeds \$75,000.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Northwest resides here and a substantial part of the events giving rise to the claims occurred here.



## **BACKGROUND**

### *The pallet rental industry*

5. Traditionally, commercial goods in the United States moved on so-called “whitewood” pallets, which often are poorly constructed, do not adequately protect products, and are difficult to load and unload. Of course, when goods are damaged in shipping, or take extra time to load, this raises costs for manufacturers and retailers—and ultimately consumers.

6. Thus, the market continues to grow for rented pallets (or “pooled pallets”), which are made of higher-quality, more resilient wood than white-wood pallets, and are designed to be loaded and unloaded by forklifts approaching from multiple angles.

7. PECO is a manufacturer of pooled pallets. Specifically, manufacturers rent pallets from PECO, which ships them from many regional service centers. After manufacturers load the pallets with goods, they are shipped to retailers, such as grocery chains. The retailers accept the goods on the pallets. Once the goods are unloaded from the pallets, the retailer returns the empty pallets to PECO, which repairs any damage and puts them back into circulation.

8. PECO maintains ownership over its pallets at all times and makes concerted efforts to inform the marketplace of same. For example, PECO pallets are painted a distinctive bright red color and are stamped “Owned by PECO.” PECO also utilizes a proprietary, web-based Red<>Link™ system to track and recover its pallets across the country, with a supporting service team of 78 people. Moreover, PECO’s rental contracts expressly provide that PECO’s pallets at all times remain PECO property, and that the renter may not do anything inconsistent with such ownership. Further, PECO frequently broadcasts to the industry, including pallets recyclers such as Northwest, that it maintains ownership of its pallets.

9. A “pallet recycler” is a party who, among other things, collects all types of pallets (white-wood and rental) from retailers’ loading docks. This process is called “sweeping.” After sweeping the docks, the pallet recycler sorts the pallets, and, in the case of rented pallets, returns them to their rightful owners, on behalf of the retailers.

10. In the case of PECO pallets, the pallet recycler returns the pallets by notifying PECO that a load is ready for pickup.

11. In any event, when a pallet recycler is sweeping the dock of a retailer, the recycler may also acquire white-wood pallets. Traditionally, whatever price the pallet recycler can command for those pallets, it may keep for itself. Many pallet recyclers, including Northwest, then re-sell these white-wood pallets back to the market place.

12. Thus, a pallet recycler receives a substantial benefit for sweeping a retailer’s dock: it may keep all the white-wood pallets it finds and reap a profit on those pallets, less only a fee, if any, it must pay the retailer.

### **GENERAL ALLEGATIONS**

#### ***Northwest refuses to return 175,000 pallets; threatens to “dispose” of them***

13. From May to August 2015, Northwest, a pallet recycler headquartered in Illinois, swept the docks of some of PECO’s retailer customers and wrongfully detained approximately 175,000 PECO pallets, valued at \$3.68 million. Almost 17,000 of these pallets were wrongfully detained at Northwest’s headquarters in Belvidere, Illinois.

14. In exchange for returning PECO’s pallets, Northwest at first demanded that PECO pay Northwest’s random fees ranging from \$1.25 to \$2.15 per pallet, plus “storage” fees of \$0.50 per pallet, per day, retroactive to June 1, 2015. The pallets are worth about \$21.00 each,

meaning that Northwest's purported \$0.50 per day "storage" fee would have consumed the cost of the pallets after 42 days, at that point leaving PECO with no incentive to recover the pallets.

15. In July 2015, Northwest's National Sales Manager informed PECO that Northwest would withhold "any" shipments until PECO paid Northwest's demanded price for the pallets.

16. Later that month, Northwest insisted on receiving a check for its demanded fees at pickup and demanded that PECO supply equipment and personnel to load its pallets. If PECO refused to pay its fees, Northwest threatened to "dispose" of PECO's pallets "by placing them in the dumpster."

17. PECO repeatedly demanded that Northwest return its pallets for \$0.20 per pallet, which is a fair courtesy fee for the cost of sorting, loading, and returning pallets from the docks of PECO's retailer customers.

18. On August 4, 2015, PECO brought an action against Northwest to recover its pallets and to prevent Northwest from again holding them hostage for an inflated price. After PECO filed its lawsuit in this Court, Northwest filed a retaliatory action against PECO in the Western Division of this Court.

19. The next day, PECO moved for entry of an order of replevin requiring law enforcement authorities to return the nearly 17,000 pallets being held by Northwest in Belvidere, Illinois.

20. Faced with PECO's motion for an order of replevin, Northwest returned the almost 17,000 pallets from Belvidere, a process that ended by September 9, 2015. That same day, PECO withdrew its motion.

***Northwest claims to have returned all pallets; tens of thousands remain outstanding***

21. Since September 9, 2015, Northwest has repeatedly claimed to have returned all of the remaining rental 158,052 pallets that it withheld beginning in May 2015.

22. Despite Northwest's assurances, however, PECO's Red<>Link™ system continues to show tens of thousands of pallets missing.

23. PECO has repeatedly demanded return of the remaining pallets and has not abandoned them to the marketplace.

***PECO Uncovers Evidence of the Possible Disposition of Some of its Missing Pallets***

24. During the course of discovery, PECO identified correspondence that seems to explain the whereabouts of a number of missing pallets.

25. REDACTED

[REDACTED]

26. REDACTED

[REDACTED]

27. REDACTED

28. REDACTED

From May to August 2015, Northwest swept the docks of PECO's retailer customers and wrongfully detained approximately 175,000 PECO pallets, valued at \$3.68 million.

29. By September 9, 2015, Northwest had returned the approximately 17,000 pallets that were being illegally detained at its Belvidere facility, however 158,052 remained unreturned. Despite Northwest's claims to have returned all of these pallets, PECO learned that approximately 7,800 PECO pallets were sitting at a Target distribution facility handled by Northwest. There are still 33,000 pallets that were located at retailers serviced by Northwest but have not been returned by Northwest or its recycler partners to PECO.

30. REDACTED

31. REDACTED

32. REDACTED

33. REDACTED

REDACTED

34. REDACTED

**FIRST COUNTERCLAIM: UNJUST ENRICHMENT** REDACTED

35. The allegations in paragraphs 1-34 are incorporated as if stated fully herein.

36. REDACTED

37. REDACTED

38. REDACTED

39. REDACTED

**SECOND COUNTERCLAIM: UNJUST ENRICHMENT** REDACTED

40. The allegations in paragraphs 1-39 are incorporated as if stated fully herein.

41. REDACTED

42. REDACTED

43. REDACTED

44. Northwest's retention of such funds is unjust, and violates fundamental principles of justice, equity, and good conscience.

**THIRD COUNTERCLAIM: CIVIL CONSPIRACY**

45. The allegations in paragraphs 1-44 are incorporated as if stated fully herein.

46. REDACTED

47. REDACTED



48. REDACTED

49. REDACTED

50. Thus, Northwest REDACTED not only understood the general objectives of their conspiratorial scheme, but accepted them, and acted to further those objectives.

WHEREFORE, PECO prays for a judgment against Northwest as follows:

1) REDACTED

2) REDACTED

3) REDACTED

4) REDACTED

5) Punitive damages.

Dated: November 2, 2016

Respectfully submitted,

**PECO Pallet, Inc.**

By: /s/ William C. O'Neil

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William C. O'Neil

Kathryn W. Bayer

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served via CM/ECF upon the following on November 2, 2016:

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Kevin T. Mocogni  
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